

s.7 "life, liberty & security of the person"

"not to be deprived thereof except in accordance w PFJ"

> s.7 is the first group of legal rights people have when dealing w the justice system

- ① apply only to human persons
- ② apply to all physically present within Canada (beyond legal status)
- ③ if a gov't is going to deprive one of s.7 rights, or impact them, it must do so in a way that follows basic notions of FAIRNESS, JUSTICE, & RESPONSIBLE use of gov't power
↳ e.g., to deprive one of their liberty, one must have a fair trial

How a s.7 claim works

(PROTECTION) ←

STAGE 1

- does gov't action fall within the scope of rights protected by s.7?
- if so, has there been a DEPRIVATION of the claimant's "life, liberty & security of the person"? only need one of three
- if so, has the claimant experienced a loss or restriction as a result (i.e., NEGATIVE IMPACT)

STAGE 2

- was the DEPRIVATION justified in accordance with PFJ?
"Beare test"

well established PFJs include

- ① overbreadth - "collateral damage" "criminalize the innocent"
"catch people or activities that are not its focus"
- ② gross disproportionality - "means used to accomplish state's goals should not be unduly harsh or severe"
- ③ shocking the conscience - "state's action would deeply offend the average person" - punish children, deport to torture, knowingly incarcerate innocent
- ④ right to make full answer and defence - "right to know case against" "vigorous defence"

STAGE 3 — is the claim for a negative or positive right?

↳ typically s.7 interpreted as a negative right "right not to be deprived"

↳ positive rights require gov't to provide access to, or facilitate, a right (Gosselin)
(e.g., state required to ensure abortion clinics or supervised injection sites.)

STAGE 4 — s.1 / Oakes Test / justified violation (we know this as **STEPS**)

↳ (NB (Min. of Health)) "unlikely for a s.7 violation to be justified under s.1 except in cases arising out of exceptional conditions, such as natural disasters, the outbreak of war, epidemics, and the like."

↳ (Malmo-Levine) s.7 rights are ① "very significant and cannot be ordinarily overridden by competing social interests"
② "rarely will a violation of the PFJ be upheld as reasonable" in a free & democratic society